IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4162 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

H.S. CHHADIA HSO, (PI)

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 4162 of 2002

MR MS TRIVEDI for Petitioner No. 1

MR MS RAO for Respondent No. 1-2

DS AFF.NOT FILED (R) for Respondent No. 3

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 01/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. The petitioner was appointed as a Phone Inspector with effect from 13/1/19975 with the respondent - BSNL. While he was serving as a Special Grade Phone Inspector at Rajkot, by his letter dated 20/11/2000 he requested for voluntary retirement from service due to unavoidable circumstances with effect from 28/2/2001. The said application was processed immediately by the respondents but before its acceptance he applied for withdrawal of his voluntary retirement application on the ground that he was already selected for the post of JTO and therefore he decided to join the training for JTO immediately. The said withdrawal application was granted by the authorities. Therefore, he continued to remain in service.

2. On 17/1/2002 he once-again applied for voluntary retirement from service (Annexure-B) on the ground that due to unavoidable circumstances he was not able to render his services and the same may be treated as three months notice. Accordingly he applied for voluntary retirement from service under rule 48-A of the Central Civil Services (Pension) Rules (for short 'Pension Rules').

However, before the acceptance of his voluntary retirement application dated 17/1/2002, within 11 days thereof he applied for withdrawal of his application of voluntary retirement by his letter dated 28/1/2002 (Annexure-C). No decision was taken on it. Therefore, once-again on 19/2/2002 he made an application for withdrawal of his voluntary retirement notice (Annexure-D) wherein he had stated that he had responsibility of his brother, who was mentally retarded and his young daughter aged 22 years. It seems that without properly considering subsequent applications withdrawing his applications for voluntary retirement, a decision was taken on 26/3/2002 (Annexure-A) by the authority to retire petitioner voluntarily with effect from 17/4/2002 and accordingly Divisional Engineer (E/M) KR Exchange, Rajkot was asked to intimate to the petitioner that his application of withdrawal of voluntary retirement application was not accepted. This has been challenged by the petitioner in this petition.

3. When this petition was initially placed before the Division Bench of this Court on 16/4/2002, reliance was placed on the judgment of the Hon'ble Supreme Court rendered in the case of Shambhu Murari Sinha v/s. Project and Development India Ltd., 2002 AIR SCW 1165. Considering the said judgment of the Hon'ble Supreme

Court, Division Bench of this Court straightaway admitted this petition and fixed it for final hearing on 6/5/2002 and by a brief reasoned order also granted ad-interim relief in terms of para. 13 (C), whereby the impugned decision dated 26/3/2002 (Annexure-A) taken by the authority not accepting his application of withdrawal of voluntary retirement application and directing him to retire voluntarily with effect from 17/4/2002, was stayed. The said interim relief is in operation till today. Thus, under the interim orders of the Court the petitioner is continued in service.

4. At the outset, we may state that the petitioner is in service of the respondents since last 28 years and now there are hardly two years left for his superannuation. Admittedly, during his long standing service of 28 years, there was no disciplinary inquiry held against him for any type of misconduct and he has discharged his duties with utmost integrity, honesty and sincerity. It is true that in the past also he had applied for voluntary retirement and immediately thereafter he had withdrawn the said application for voluntary retirement on different ground and at that time the authority allowed to withdraw his application for voluntary retirement and continued him in service. But, this time, it seems that the authority was not in mood to accept his withdrawal application and determined to get rid of the petitioner because of his past conduct of applying for voluntary retirement and later on withdrawing such applications for voluntary retirement on different grounds.

Detailed reply affidavit is filed to this petition by the respondents. Mr. Rao learned counsel for the respondents vehemently submitted that the impugned order at Annexure-A passed by the authority not to accept his application of withdrawal of voluntary retirement application and to retire him voluntarily with effect from 17/4/2002 was strictly in accordance with law. Heavy reliance was placed on Rule 48-A of Pension Rules, which is annexed with the reply affidavit at page 36. Mr. Rao submitted that under Rule 48-A (4) a Government servant, who has preferred to retire under this rule and has given the necessary notice to that effect to the appointing authority, is precluded from withdrawing his notice except with the specific approval of such authority. He, therefore, submitted that in the instant case the authority has refused to grant such approval. Therefore, the petitioner was precluded from withdrawing his notice of voluntary retirement.

5. However, from the impugned order at Annexure-A dated 26/3/2002 passed by the authority it is clear that while taking the decision of not accepting the application of the petitioner of withdrawal of voluntary retirement and retiring him voluntarily with effect from 17/4/2002 the authority has not taken into consideration the reasons assigned by the petitioner in his withdrawal applications and not assigned any valid reasons in the impugned order at Annexure-A. It is true that under rule 48-A (4) of the Pension Rules the petitioner was precluded from withdrawing his notice without the approval of the authority and the authority had discretion to grant approval or not. However, such discretion has to be exercised fairly and judiciously. From the averments made in the reply affidavit by the respondents, it appears to us that the authority was annoyed because of the past similar conduct of the petitioner of submitting application for voluntary retirement and then withdrawing the same on different grounds and only because of that, this time the authority was adamant in not accepting his application for withdrawal of his application for voluntary retirement.

6. Heavy reliance was placed by the learned counsel for the petitioner on the judgment of the Hon'ble Supreme Court rendered in the case of Shambhu Murari Sinha (supra), wherein the Hon'ble Supreme Court held that in absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at ay time before it becomes effective, and it, becomes effective when it operates to terminate the employment or the office tenure of the resigner. However, an attempt was made by the learned counsel Mr. Rao for the respondents to distinguish that judgment by submitting that in the case of Shambhu Murari Sinha (supra) there was no such rule like rule 48-A of the Pension Rules, which is applicable in this case. It is true that the petitioner in his application of voluntary retirement (Annexure-B) stated that he applied for voluntary retirement under rule 48-A of the Pension Rules. Therefore, it would be within the powers of the authority to grant approval to such application or not. However, there is no such rule which specifically prohibits withdrawal of application of voluntary retirement. In the instant case, the petitioner submitted his application of voluntary retirement on 17/2/2002 and within 11 days thereof he submitted an application withdrawing his application for voluntary retirement. When the said application was not replied to, he again submitted another application dated 19/2/2002 within a period of less than one month (Annexure-D) stating that his brother is mentally

retarded person and he has young marriageable daughter aged 22 years, therefore, he is withdrawing his application for voluntary retirement. Under the circumstances, we are of the considered opinion that when there was nothing serious against the petitioner and more particularly when the petitioner had dotless career for the last 27 years when he had applied for withdrawal of his application for voluntary retirement, then the authority ought not to have taken rigid stand and insisted upon accepting his voluntary retirement application. It seems from the averments made in the reply affidavit that because of the authority undertook some exercise in processing his application and thereafter applicant has applied for withdrawal of his application for voluntary retirement, therefore, the authority has this time decided not to accept his subsequent application of withdrawal of his earlier application for voluntary retirement and decided to retire the petitioner with effect from 17/4/2002, because of his past conduct of submitting application of voluntary retirement and then withdrawing the same.

7. In view of the above discussion, the impugned decision at Annexure-A dated 26/3/2002 is required to be quashed and set aside. Accordingly, this petition is allowed and the impugned decision at Annexure-A rejecting the application of withdrawal of voluntary retirement application of the petitioner and retiring him from service with effect from 17/4/2002 is hereby quashed and set aside. The authority is now directed to accept the subsequent applications (Annexures - C and D) of withdrawing his voluntary retirement application and treat him in service as if he has not voluntarily retired from service. Rule is made absolute with no order as to costs.

[B.J. SHETHNA, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.